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# NASA Procedural Requirements

**COMPLIANCE IS MANDATORY****NPR 2081.1**Effective Date: February 17,  
2004Expiration Date: February  
17, 2009[Printable Format \(PDF\)](#)

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**Subject: Nondiscrimination in Federally Assisted and Conducted Programs****Responsible Office: Office of Diversity & Equal Opportunity**[| TOC](#) | [Preface](#) | [Chapter1](#) | [Chapter2](#) | [Chapter3](#) | [Chapter4](#) | [Chapter5](#) | [AppendixA](#) |  
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**APPENDIX C. Additional Information On Enforcement Of Executive Order 13160**

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**C.1. Relationship with other laws, Regulations, and Executive Orders**

C.1.1. In cases where a complaint raises claims under both Executive Order 13160 and Executive Order 11478 (but does not raise statutory claims), since NASA does not have a complaint procedure for claims arising under Executive Order 11478, the complaint will be processed in accordance with the procedures for Executive Order 13160 as set forth above. If a complainant raises claims under Executive Order 13160, Executive Order 11478, and an EEO statute (including Title VII of the Civil Rights Act of 1964, Section 501 of the Rehabilitation Act of 1973, or the Age Discrimination in Employment Act of 1967), the complaint will be consolidated and adjudicated under NASA's EEO procedures.

C.1.2. As a practical matter, this means that a NASA employee seeking to file a complaint under this Executive Order must indicate whether the complaint is related to his or her employment and, if so, whether he or she has filed any other EEO claims arising out of the same circumstances.

C.1.2.1. If the employee has filed an EEO claim, the complaint filed under the Executive Order will be transferred to the appropriate NASA Center and the enforcement procedures set forth above will be deemed inapplicable.

C.1.2.2. If a NASA employee chooses to proceed solely under this Executive Order, the enforcement procedures set forth above will govern the disposition of his or her complaint.

C.1.2.3. If a NASA employee indicates that he or she has not filed any other EEO complaints at the time of filing a complaint under this Executive Order, the employee may nevertheless subsequently elect to file a related complaint under Title VII, Section 504, or the ADEA, provided the employee follows the appropriate EEO procedures. In such cases, the employee shall notify OEOP that he or she has decided to file an EEO complaint so that the Executive Order 13160 complaint may be transferred to the appropriate office as provided for above. OEOP will ensure that all NASA employees filing Executive Order 13160 complaints have adequate notice that they shall advise OEOP about their complaint if they decide to pursue their claims through the EEO process.

C.1.3. Enforcement procedures set forth in this directive may govern the resolution of a complaint filed by a Federal employee who is employed by an agency other than NASA and/or is involved in a training program conducted by NASA.

**C.2. Reporting Requirements**

C.2.1. For the first 3 years following issuance of the Executive Order, OEOP will file annual reports with the Attorney General that summarizes the number, nature, and disposition of complaints filed under the Executive Order. [39]

C.2.2. OEOP will submit such reports to the Assistant Attorney General for Civil Rights within 90 days of the end of the preceding year's activities.

C.2.3. OEOP will submit subsequent reports every 3 years and within 90 days of the end of each 3-year period.

- [1] This agreement delegates authority to the Department of Education to receive complaints of discrimination and conduct pre- and postaward compliance reviews of public elementary and secondary schools and institutions of higher education receiving NASA financial assistance. See 52 Fed. Reg. 43385 (November 12, 1987).
- [2] See Note 1 above.
- [3] This document provides detailed policy and enforcement guidance on Executive Order 13160 for Federal agencies. It may be accessed at <http://www.usdoj.gov/crt/cor/Pubs/13160guid.htm>.
- [4] DOJ's Title VI Investigations Manual is an invaluable resource, providing comprehensive information on conducting Title VI complaint and compliance review investigations. It may be accessed at <http://www.usdoj.gov/crt/cor/Pubs/manuals/complain.html>.
- [5] Like the Title VI Investigations Manual, DOJ's Title VI Legal Manual provides comprehensive information. It may be accessed at <http://www.usdoj.gov/crt/cor/coord/vimanual.htm>. A careful reading of this manual is essential to a complete understanding of the legal underpinnings of investigative procedures set forth in this manual.
- [6] The DOJ Title VI Investigations Manual states that for a complaint to be "complete" the following information is required: (1) a way to contact the complainant; (2) the basis of the complaint, i.e., identification of the person or group injured by the alleged discrimination; (3) the respondent, i.e., identification of the person or institution alleged to have discriminated; and (4) sufficient information to understand the facts that led the complainant to believe that discrimination has occurred and when the discrimination took place. DOJ Title VI Investigations Manual, p. 16.
- [7] Under Executive Order 13160, Sec. 2-203, the Attorney General is authorized to make a final determination as to whether a program falls within the scope of education, training programs, and activities covered.
- [8] 42 U.S.C. §§ 2451 et seq., National Aeronautics and Space Act of 1958, as amended.
- [9] It shall be noted that the variation in scope and coverage as between the authorities listed in 3.1.1. causes a problem with terminology, specifically the term to be used to denote the respondent of a complaint filed pursuant to one or more of these authorities. Prohibited discrimination pursuant to Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments Act of 1972, and the Age Discrimination Act of 1975 is limited to Federally assisted programs and activities. Therefore, in complaints filed pursuant to one or more of these laws, the complaint respondent will be a "recipient" of Federal funds. Prohibited discrimination pursuant to Section 508 of the Rehabilitation Act of 1973 and Executive Order 13160, is limited to Federally conducted programs and activities. The term "conducted" refers to programs and activities implemented by a government agency itself. Therefore, for purposes of this manual, a "respondent" in a complaint brought pursuant to one of these authorities will be NASA (or a NASA component installation). Section 504 of the Rehabilitation Act of 1973 covers discrimination in both Federally assisted and conducted programs and activities. For the sake of convenience, this manual will refer to all complaint respondents, whether a "recipient" of NASA funds, or NASA itself, as "respondent."
- [10] See *a/so* Appendix A, which contains a flow chart of the complaints process.
- [11] DOJ's Title VI Investigations Manual notes that the receipt date of a complaint shall always be noted by the receiving agency immediately upon receipt. The manual states that "This is important because the date [the] agency receives the complaint may be what ultimately determines the complainant's ability to seek redress of alleged discrimination, even if [the] agency is not the appropriate agency to investigate the complaint. The receipt date by a Federal agency becomes the receipt date for other Federal agencies." DOJ Title VI Investigations Manual, p. 10.
- [12] The DOJ Title VI Investigations Manual states that for a complaint to be "complete" the following information is required: (1) a way to contact the complainant; (2) the basis of the complaint, i.e., identification of the person or group injured by the alleged discrimination; (3) the respondent, i.e., identification of the person or institution alleged to have discriminated; and (4) sufficient information to understand the facts that led the complainant to believe that discrimination has occurred and when the discrimination took place. DOJ Title VI Investigations Manual, p. 16.
- [13] See n. 10 for a discussion on receipt date.
- [14] Such notice will contain the following information: (1) any individual filing a complaint may be represented and assisted in all stages of these proceedings by an attorney or representative of his or her own choosing; (2) an individual has a responsibility to promptly inform OEOP if legal counsel is retained, and an individual has an obligation to notify OEOP if he or she wishes to have any other representative included in these proceedings; (3) it is the responsibility of the complainant to provide OEOP with the name, address, and telephone number of any attorney or other representative; and (4) it is an ongoing responsibility of the complainant to advise OEOP as to any changes with respect to the status of his or her legal representative or other representation.
- [15] If information establishes that NASA has no jurisdiction over the subject matter or institution alleged to have discriminated, it is not necessary to inquire further about the factual bases for the complainant's belief that discrimination has occurred.
- [16] Note that NASA's regulations describe the specific type of conduct its laws prohibit. If a complaint is not filed

against an institution NASA covers, or if the complaint does not state a claim under the laws NASA enforces, NASA will not proceed further with the complaint.

[17] See Appendix B for procedures on handling complaints of employment discrimination under Title VI, Title IX, Section 504, and the Age Discrimination Act; see <http://www.usdoj.gov/crt/cor/Pubs/13160guid.htm> with respect to jurisdictional issues pertaining to NASA employees in the context of complaints filed under Executive Order 13160.

[18] The use of the "180-days" requirements does not change the "90-days" requirement set forth in NASA's regulations or the Director of OEO's responsibilities to enforce NASA's Title VI regulations.

[19] DOJ regulations state that "an agency will allow complainants 180 days to file a , complaint, although the Agency may exercise its discretion and accept a complaint filed later in time." See, e.g., 28 C.F.R. § 42.107(b). DOJ has indicated in policy guidance (Title VI Legal Manual and Title VI Investigative Manual) that agency "designated officials" (in NASA's case the Assistant Administrator for Equal Opportunity Programs) are vested with the authority to grant such waivers under certain circumstances. See DOJ, Title VI Legal Manual, §X(C) and Title VI Investigations Manual, § III(5)(A). For circumstances under which a waiver of the 180-day filing requirement may be granted see 3.4.6.4 .

[20] These reasons apply to individual (as opposed to class) complaints, unless so stated.

[21] See Section 3.5 on Alternative Dispute Resolution (ADR).

[22] Information collected pursuant to a Title VI complaint/compliance investigation is NASA Administratively Controlled Information and subject to the provisions of NPG 1620.1A, Security Procedural Requirements-- w/Change 1 (9/13/02), identifying procedures for identifying and storing NASA ACI.

[23] References to such staff in the context of conducting ADR includes staff at the Agency level and the Center level.

[24] See DOJ Title VI Legal Manual, § VIII, and DOJ Title VI Investigations Manual, § V(3)(a)-(c), for detailed discussion and analysis of disparate treatment; disparate impact; national origin/limited English proficiency; and retaliation in the context of Title VI and other nondiscrimination statutes (See also U.S. Department of Justice, "Executive Order 13160 Guidance Document: Ensuring Equal Opportunity in Federally Conducted Education and Training Programs," 66 Fed. Reg. 5397-5410 (January 18, 2001).

[25] Information collected pursuant to a Title VI complaint/compliance investigation is NASA Administratively Controlled Information and subject to the provisions of NPG 1620.1A, Security Procedural Requirements-- w/Change 1 (9/13/02), identifying procedures for identifying and storing NASA ACI.

[26] DOJ Title VI Investigations Manual, p. 100.

[27] See section on "The Interview Process" below.

[28] DOJ Title VI Investigations Manual, p. 80.

[29] For a detailed discussion on evidence in the complaint investigation process, see DOJ Title VI Investigations Manual, pp. 79-100. Information collected pursuant to a Title VI complaint/compliance investigation is NASA Administratively Controlled Information and subject to the provisions of NPG 1620.1A, Security Procedural Requirements-- w/Change 1 (9/13/02), identifying procedures for identifying and storing NASA ACI.

[30] See Appendix D for enforcement action under Title VI, Title IX, Section 504, and the Age Discrimination Act.

[31] See USCCR Title VI Report, p. 147.

[32] Ibid.

[33] Ibid.

[34] Ibid.

[35] See §§ 3.7.1.3., 3.7.1.4. on preparing the LOF.

[36] See U.S. DOJ, Civil Rights Division, Coordination and Review Section, *Title VI Legal Manual*, Sec. IX(A).

[37] See id.

[38] *See id.* See id.id.

[39] NASA filed the first of these reports on March 31, 2002. The final report will be issued in 2004.

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